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the insured is justified in assuming that a proof of loss would be useless. The court further held, however, that if the company's refusal occurred after the expiration of the sixty days there still would be waiver, since the refusal would be evidence of an actual intent to waive. No ground for an estoppel or contract was alleged and there was no opportunity for applying the rule against inconsistent positions, since the defendant company by its refusal not only did not recognize the policy as binding, but expressly denied all liability under it. The holding seems clearly to the effect that the mere expression of an actual intention to waive will without more establish a waiver.

Contracts of insurance in many respects are subject to special rules, the tendency of which is to favor the insured. It is in accord with this treatment to dispense with the strict technical requirements of a contract or of an estoppel as the basis of a waiver. In every case, however, where the court has found a waiver something in the nature of an estoppel has existed. See *Armstrong v. Agricultural Ins. Co.*, 130 N. Y. 560. The principal case goes beyond this, and takes a position which on authority at least is apparently unjustifiable.

THE CONSTITUTIONAL PROHIBITION OF THE DELEGATION OF LEGISLATIVE POWER. — The political movement in favor of the Referendum gives increasing importance to the question of the constitutional right of the legislature to submit proposed laws to popular vote. The desire of cities for a greater degree of self-government, and the growing distrust of legislatures as shown by the restrictions placed upon them in the later state constitutions, combine to increase the demand that the people be given direct control in law-making. The somewhat unsettled condition of the law on this point encourages the advocates of the reform to work under the present constitutions rather than to attempt to pass amendments. In a recent case an act limiting the compensation of the officers of a certain county was held void since it was to take effect only on approval by popular vote. *State v. Garver*, 64 N. E. 573 (Oh.). The Ohio Constitution expressly prohibits the legislature from passing laws to take effect on the approval of any further authority. Under that provision the Ohio courts make the cases turn largely on the wording of the acts; the law must be declared to be a complete and valid law on its passage, but its execution may be made dependent on a favorable vote of the people. *Cincinnati, etc., R. R. v. Commissioners of Clinton County*, 1 Oh. St. 77.

That a legislature may not delegate its law-making powers to any individual or body is well established as being a general principle implied if not expressed in all of our constitutions. See *Bradley v. Baxter*, 15 Barb. (N. Y.) 122. It may not let others pass upon a proposed law, nor may it, by a law which is itself complete, grant away the power to make laws. The legislators are said to be trustees for the people and to have no right to assign to others their high responsibility. Just what is covered by that expression is, however, uncertain. Both theory and precedent authorize the legislatures to clothe municipal corporations with powers of a local administrative nature and to submit to the voters of special districts matters of local government. Questions of municipal subscription for special improvements and questions as to the location of county seats are instances of such action. *Starin v. Town of Genoa*, 23 N. Y. 439; *Commonwealth v. Painter*, 10

Pa. St. 214; see 12 HARV. L. REV. 138. That is a delegation of power which the legislature might have exercised itself, yet it is clearly justifiable. The central authority has neither the time nor the special knowledge required to deal properly with the details of municipal rule. According to the weight of authority, the legislature may also enact a general law, as of local option, and leave the adoption of it in any district to a vote of the people of that district. *Locke's Appeal*, 72 Pa. St. 491. So too a statute may be passed to take effect on some future contingency other than the expression of approval by any authority. *Phoenix Ins. Co. v. Welch*, 29 Kan. 672. Attempts have been made to show a controlling analogy between one or more of these classes of cases and the Referendum in order to support the latter. *Smith v. City of Janesville*, 26 Wis. 291. There is a clear distinction, however, in the fact that in the former cases the law is complete on its passage by the legislature, while in the latter its existence as a law depends on the vote of the people. The general principle forbidding reference to the popular vote is well established, though there has been some confusion as to the exceptions mentioned. The latter should be analyzed and classified with greater care, but it is well to avoid hard and fast rules in this kind of question and to leave individual cases to the double discretion of the legislatures and the courts. This is a field, it should be noted, in which the courts will give the legislatures the full benefit of the presumption that their acts are constitutional.

RECENT CASES.

ADMIRALTY — JURISDICTION OVER TORTS — NECESSITY OF MARITIME RELATIONS. — The plaintiff was a laborer employed by the defendant, a firm of stevedores which had been engaged to unload a ship. While at work in the hold of the ship he was injured by the negligence of the defendant. *Held*, that the relation between the parties is not such as to give a court of admiralty jurisdiction. *Campbell v. Huckfeldt & Co. Ltd.*, U. S. Dist. Ct., Hawaii, Oct. 21, 1902. See NOTES, p. 210.

AGENCY — INCIDENTAL AUTHORITY — STREET RAILWAY CONDUCTOR. — The plaintiff, while riding on the platform of a street car, contrary to the company's rules but with the permission of the conductor, was injured through the negligence of the company's employees. The jury found that the plaintiff was not negligent and had no notice of the rules. *Held*, that the plaintiff cannot recover as a passenger, since the conductor had no authority to carry him in that way. *Byrne v. Londonderry Tramway Co.*, [1902] 2 Ir. Rep. 457.

If the act of an agent is within the ordinary scope of employment of persons in a similar position, no express limitation of the agent's authority will exempt the principal from liability for such an act to a third party who has no notice of the limitation. *Byrne v. Massachusetts Packing Co.*, 137 Mass. 313. Therefore the question whether the plaintiff in the principal case could become a passenger by reason of the conductor's permission to ride on the platform, must depend on whether it is incidental to and within the ordinary power of street car conductors to give such permission. An American court has answered this in the affirmative, in the case of one riding free on a car-driver's invitation. *Wilton v. Middlesex R. R. Co.*, 107 Mass. 108. Similarly, one permitted to ride in a caboose, contrary to rules, is a passenger. *Creed v. Pa. R. R. Co.*, 86 Pa. St. 139. And arguing from the customs and the comfort and convenience of passengers, as well as from the usual practice of street railway companies, in this country at least, it would seem that reason, as well as direct authority and analogy, would point to a conclusion contrary to that in the principal case.

AGENCY — PUBLIC OFFICERS — RAILROAD'S LIABILITY FOR LOSS OF MAIL. — A mail package was lost through the negligence of an employee of a railroad company